1 GREGORY L. WILDE, ESQ. Nevada Bar No. 004417 2 **WILDE & ASSOCIATES** 212 South Jones Boulevard 3 Las Vegas, Nevada 89107 Telephone (702) 258-8200 4 5 Attorneys for Secured Creditor Wells Fargo Bank, N.A. 10-71631 6 7 8 9 In Re: 10 Sonia G. Lopez 11 12

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEVADA

Bk Case No.: 10-13672-lbr

Date: November 9, 2010

Time: 10:30 am

Chapter 7

Debtor.

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## **DECLARATION IN RESPONSE TO ORDER TO SHOW CAUSE**

I, GREGORY L. WILDE, ESQ., hereby declare under penalties of perjury of the United States of America that;

I am counsel of record for Wells Fargo Bank, N.A., in regards to this matter and responsible for the Motion for Relief From Automatic Stay which is the subject of this proceeding.

On September 29, 2010, a hearing was held before the Court on the Secured Creditor's Motion for Relief wherein the Court recognized that the Debtor had been discharged so the request was moot. However, the Court ruled that Secured Creditor, to the extent that it had initiated a foreclosure proceeding, must file a "new" Notice of Default.

Upon the oral allegations made in open Court by Stephanie Harmrick, Esq., the Court further ordered Secured Creditor to provide a Declaration and payment history to the Debtor and counsel, setting the matter for November 9, 2010.

The oral allegations included, but were not limited to, that the Secured Creditor had entered into a forebearance agreement with the Debtor, and that later it, or its counsel, had prepared false pleadings in an effort to harass or otherwise annoy the Debtor. There were no documents or testimony to substantiate these allegations.

In fact, the Debtor had filed an opposition to the motion on August 25, 2010 and did not make or mention the allegations made by her temporary counsel. However, she did claim that she had made all the "pre-petition" and "post-petition" payments due under the note, which was not the case.

That undersigned counsel promptly contacted the Secured Creditor to obtain a payment history and explanation pursuant to the Court's direction and by October 18, 2010, had received a payment history, an explanation, and a had a draft declaration for the client's signature.

Attached as exhibit "1" is a copy of the subject declaration with the forebearance agreement as exhibit "A" and payment history as exhibit "B". For convenience purposes, undersigned counsel has attached hereto as exhibit "2" an enlarged copy of the payment history.

In full candor to the Court and Debtor, undersigned counsel "dropped the ball" at this point and did not follow up any further with the client after October 18, 2010. Perhaps since the case was closed after the hearing but this is no excuse. Any sanctions awarded will be the full responsibility of undersigned counsel.

Before the Court considers issuing sanctions, it should briefly review the attached history and forebearance agreement. It is clear that Ms. Hamrick had not seen the forebearance agreement, or perhaps any documents, and that the Debtor was not fully candid with the Court and sat back while her advocate made the misguided allegations against the Secured Creditor.

There was a temporary agreement made between the parties but it included a balloon payment of \$4,461.70 on April 3, 2010, which the Debtor did not make. She only informed the Court of the \$525.00 payments and that she had made the same. There is no dispute that she failed to make the balloon payment, choosing instead to file bankruptcy on March 8, 2010.

The Secured Creditor properly held the three (3) payments of \$525 each in suspense and later applied them pursuant to the terms of the note. Thereafter the Debtor did not perform causing the subject motion to be filed on June 23, 2010, which accurately reflects that the Debtor was due for the April 2010 payment. See exhibit "2".

The Court should note that, as detailed in the motion, a Notice of Default had not been initiated and Secured Creditor has accepted payments thereafter.

There is no reason to issue sanctions in this case for the pleadings were not false and the impromptu allegations made by Ms. Hamrick have been properly addressed demonstrating that they were not correct.

Further Declarant sayeth naught.

BY:

Gregory L. Wilde, Esq.

## Certificate of Facsimile

I certify that I am an employee of Wilde & Associates and on November 8, 2010, I faxed a copy of the foregoing document to:

Stephanie Hamrick, Esq. @

702 388 1641

Employee of Wilde & Associates

Exhibit "1"

- 11		
1	WILDE & ASSOCIATES	
2	Gregory L. Wilde, Esq.	
	Nevada Bar No. 004417 208 South Jones Boulevard	
3	Las Vegas, Nevada 89107	
4	Telephone: 702 258-8200 Fax: 702 258-8787	
5	rax: /02/236-8/8/	
6	Wells Fargo Bank, N.A.	
	10-71631	
7	UNITED STATES BA	NKRUPTCY COURT
8	DISTRICT O	OF NEVADA
9	In Re:	10-13672-lbr
,	in Ke:	Date:
10	Sonia G. Lopez	Time:
11		Chapter 7
12	Debtor	)
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14	<u>DECLARATION IN SUP</u>	PORT OF THE MOTION
	FOR RELIEF FROM	AUTOMATIC STAY
15	THE UNDERSIGNED DECLARES AND STATES	<b>:</b>
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17	1) I am over eighteen years of age and a	m employed by Wells Fargo Bank, N.A., Secured
18	Creditor in the instant action. I have personal know	ledge of the foregoing, except as to those matters
19	stated under information and belief, and as to those	matters I believe them to be true, and if called
20	upon as a witness I could and would competently te	stify thereto.
21	2) I am employed as the	with Secured Creditor and I
22	am familiar with Secured Creditor's treatment of loa	ans involved in Bankruptcy proceedings. The
23	records in question are maintained under my control	and supervision
24		
25	3) These documents include, but are not no	ecessarily limited to, loan documents, including
26	promissory notes and deeds of trust and assignment	s kept in the ordinary course of business, entries



are made in the records of Wells Fargo Bank, N.A., at or about the time of any loan activity reflecting that activity, and payment histories on the subject loan.

- 4) I have reviewed this account and have found that on December 3, 2009 a forbearance agreement was offered to the debtors. This agreement was signed on March 1, 2010 by the Debtors. The agreement arranged for the Debtor to make partial payments curing the account arrearages in full by a due date of April 3, 2010. The Forbearance Agreement is attached as Exhibit "A". Payments in the amount of \$525.00 were to be paid on January 3, 2010, February 3, 2010 and March 3, 2010 with a final payment in the amount of \$4,461.70 due on or before April 3, 2010. The lower amounts that were outlined were designed to allow the borrower time to determine how they can resolve or improve their financial situation. This was simply a catch up plan to cure the default amounts and did not state that the funds would be applied as regular monthly mortgage payments nor was it a promise of a loan modification.
- 5) Pursuant to the attached history Exhibit "B" The payments remitted on this account according the forbearance agreement are as follows:

January 4, 2010 payment in the amount of \$525.00

February 3, 2010 payment in the amount of \$525.00

March 3, 2010 payment in the amount of \$525.00

April 16, 2010 payment in the amount of \$525.00

As reflected in the forbearance agreement the final payment was due on April 3, 2010. Debtor's final payment due, according to the plan was \$4,461.70. Their remittance of only \$525.00 voids this plan and allows the delinquency to remain.

- 6) The initial review of the borrower's financials determined that Debtors had a deficiency in their income (see subsection A below). Updated Financials were received (see subsection B below). and Debtors were ultimately denied for a loan modification because they did not show the ability to repay the mortgage based on the updated financials provided by the Debtors.
  - a) At the time of the repayment plan the borrower provided the following financials:

1ST/2ND MORTGAGE	\$1,207.34
PYMTS: INSTALL/CARS	\$1,722.00
FOOD	\$200.00
UTILITIES	\$285.00
TRANSPORTATION	\$383.00
MEDICAL/INS EXP	\$200.00
CABLE, INTERNET, ENT	\$260.00
CLOTHING/OTHER MISC	\$400.00
INCOME:	\$3,075.00
EXPENSES:	\$4,657.34
SURPLUS/DEFICIT(-):	(-\$1,582.34)

b) As of 04/22/10 the debtor provided the following updated financials:

IST/2ND MORTGAGE	\$1,207.34
FOOD	\$200.00
UTILITIES	\$285.00
TRANSPORTATION	\$383.00
MEDICAL/INS EXP	\$200.00
CABLE,INTERNET,ENT	\$216.99
CLOTHING/OTHER MISC	\$400.00
PYMTS:INSTALL/CARS	\$1,458.00
INCOME:	\$3,912.86
EXPENSES:	\$4,350.33
SURPLUS/DEFICIT (-):	(-\$437.47)

The current amounts due in order reinstate the loan good through 9/15/10 is as follows:

REINSTATE ON	09-15-10
NEXT DUE DATE WILL BE	10-01-10
PAYMENTS DUE	4
TOTAL PAYMENT AMOUNT	\$4,829.36
ACCRUED LATE CHARGES	\$144.87
SUSPENSE	(\$892.66)
CORPORATE ADVANCE	\$125.00
BANKRUPTCY FEES & COSTS	\$800.00
TOTAL DUE	\$6,791.89

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2	I declare under penalty of perjury that the foregoing is true and correct.
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5	BY:
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7	SUBSCRIBED AND SWORN TO before me, the undersigned notary public, on the September 11, 2010.
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10	Notary Public
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Return Mail Operations P.O. Box 10368 Des Moines, IA 50306-0368

December 03, 2009

Sonia G Lopez
Jessica G Flores
6525 Charlie Chaplin Ave 103
Las Vegas NV 89122-1766

Client 708 Loan Number 0210205609 Due Date: 12-01-09

Thank you for contacting us regarding your temporary financial hardship on the above mentioned loan. We are concerned when our customers are experiencing a financial hardship which is beyond their control and are here to assist you through this difficult period.

1. As discussed we have granted you the payment arrangement listed below.

PLAN	DATE	AMT	PLAN	Date	AMT & 525.00
01	01/03/10	525.00	02 (	2/03/10	525.00
03	03/03/10	525.00	04 (	34/03/10	4,461.70

- 2. This is a period for you to determine how you can resolve or improve your financial situation. This plan is not a waiver of the accrued or future payments or late charges that become due.
- 3. During this period, we are requesting that you contact our office monthly or if changes occur to your financial situation, contact us immediately. If you are unable to make a payment on the plan by the date indicated above, further collection activity may result, including foreclosure.
- 4. On 04/03/10, all past due payments and accrued charges are due. If you are unable to make the final payment listed above, you must have established acceptable arrangements with our office for bringing your loan current.
- 5. Please sign and date the enclosed agreement and return to the following address or you may fax to (866) 359-7363. Payments during the plan should be sent to the following address:

Wells Fargo Home Mortgage 3476 Stateview Blvd., MAC X7801-03K Fort Mill SC 29715

If we can be of further assistance, please call us at (800) 416-1472, Monday through Thursday, 8 AM to 11 PM; Friday, 8 AM to 9:30 PM; or Saturday, 9 AM to 1 PM, Eastern Time.

We are required by the Fair Debt Collection Practices Act to inform you if your loan is currently delinquent or in default, as your loan servicer, we will be attempting to collect a debt, and any information obtained will be used for that purpose. However, if you have received a discharge, and the loan was not reaffirmed in the bankruptcy case, we will only exercise our rights against the property and are not attempting any act to collect the discharge debt from you personally.



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· 708 0210205605

SPECIAL FORBEARANCE AGREEMENT - TERMS AND CONDITIONS fine indebtedness of the referenced loan is in default and in consideration of extending forbearance for a period of time, it is necessary that you indicate your understanding and acceptance of the terms of the forbearance agreement by immediately signing and returning this agreement. Failure to sign and return this agreement with your first installment will render it null and void.

- 2. Payments must be made strictly in accordance with the enclosed payment schedule and forbearance agreement conditions. This plan is an agreement to temporarily accept reduced payments or maintain regular monthly payments during the plan specified below. Upon completion of this plan, the loan must be brought current or an arrangement to satisfy the arrearage must be executed.
- 3. The lender is under no obligation to enter into any further agreement, and this forbearance shall not constitute a waiver of the lender's right to insist upon strict performance in the future.
- 4. All of the provisions of the note and security instrument, except as herein provided, shall remain in full force and effect. Any breach of any provision of this agreement or non-compliance with this agreement, shall render the forbearance null and void, and at the option of the lender without further notice to you may terminate this agreement. The lender, at its option, may institute foreclosure proceedings according to the terms of the note and security instrument without regard to this agreement. In the event of foreclosure, you may incur additional expenses of attorney's fees and foreclosure costs.
- 5. The due date of your loan will continue to be reported to the credit bureaus on a monthly basis. While this forbearance plan is in effect, there will be a special notation: "Paying under a partial payment agreement."
- 6. There is no "grace period" allowance in this agreement. All payments must be received on or before the agreed due date. If any payment is not received on or before the due date, the agreement will be void and the total delinquency, including fees, will be due immediately.
- 7. The total amount indicated on each payment of the payment schedule must be remitted. In the event the total amount due of each payment is not received, the Special Forbearance agreement will be rendered null and void.

By signing this Agreement I hereby consent to being contacted concerning this loan at any cellular or mobile telephone number I may have. This includes text messages, at no cost to me, and telephone calls including the use of automated dialing systems to contact my cellular or mobile telephone.

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Proof of Claim	\$3.00	\$0.00	80.03	\$0.00	\$0.00	00°C\$	\$0.00	20 03	00 OS	30.00	00 OS	23 00	83.63	\$0.00	\$0.00	50 DC	50.00	20.00	00'0\$	20'08	80.03	\$0,00	200	20.03	\$0.00	20.00	98 93	88	88	90.03	8	82	00 CS	\$0.00	\$0.00	80.00	90.04	20.03	20.03	20,03	898	88	88	20.03	80	808	200\$	30,00	\$0.00
Fees Assessed or Recovered	50 CS	8 22	88	8	30.00	00 OS	00'0\$	00'08	00'0\$	00'01	0003	2003	90'03	00 03	90 OS	00 03	00'03	90.08	80.08	82	90.08	8	88	90.00	20.00	8008	8 9	88	8	8	8	8	00'05	80.00	20 OS	00'05	8	80.03	80.00	8.8	8	88	8	88	8	8	<b>3</b>	\$0.00	\$0.00
Master A	\$367.00	\$367.66	\$632.60	\$632.60	SE22.00	\$632.00	\$632.06	\$£32.00	997.0038	\$632.68	\$692.00	\$232.00	\$522.53	\$692.00	\$632.00	227.03	\$632.60	823260	\$22.00	\$202.66	\$C35 C8	\$692.60	\$432.60	2272.00	\$632.60	\$832.E0	\$635 CG	\$632.08	\$672.68	\$832.56	\$502.00	\$622.66	\$632.66	\$692.00	\$692.C0	\$632.00	\$692.60	\$692.60	\$22.00	35255	249268	2222	\$502.66	\$232.66	\$392.66	502.00	\$50.5 CG	\$692.00	\$832.60
Trustee Buspense Babence	82	82 28	90.03	80.00	00 OS	20.02	20.00	00 05	00'0\$	00'01	00 03	2003	90.08	00 05	90.06	00'01	90 53	00'01	00.03	83	89	8 3	8 3	00 CS	80.03	8003	8 9	88	89	800	89	83	00'05	0003	80.00	8 3	82	90 OS	83	83	89	8 9	8 3	83	8 9	83	803	00'03	20.03
Detters Suspense Balance	\$367.56	\$367.66	\$632.66	\$600 66	93 ZS36	\$692.00	\$622.00	\$5.22.08	99 2528	\$632.66	\$532.66	\$602.68	\$620.00	\$682.66	\$692 66	92 ZC28	\$52.08	8232.08	99 2538	22 CCS	97 2528	\$692.68	\$522 CG	92 25215	\$692 66	\$832.60	22.52	22 225	99 2893	\$672.56	\$572.66	\$522 E6	\$692.00	\$692.00	SE02.60	\$525.50	\$802.00	\$502.66	es ceas	25252	25269	99259	383	\$522.65	\$632.00	\$632.60	\$525.00	\$532.60	\$532.00
Escroar Advence Balance	316400	12.0228	\$220 27	\$220 27	12 0228	\$294.45	\$294.45	SSG 70	ES6 70	\$56.70	8121.50	\$121.28	90 03	00'01	00 01	20 05	20 03	000\$	20.00	20 03	F43.36	50 X	80.03	0203	90 03	800	8 9	8 2	8	8	88	88	00 05	89	20 00 00 00 00	808	89	8 8 8	803	82	89	83	88	88	803	88	89	80.00	0003
Escrow Applied Dishursed Delence	465 18	8	90.05	80.00	91 529	80.00	\$237.75	20 05	00.018	463.16	00'05	\$2.7.75	8115.87	1115.67	59 OS\$	CD 053	17E3 44	1250.44	23.152	8K 674	8008	\$2.762	8194.33	SIMX	12,0218	\$129.21	1138.21	12021	12.02.12	12821	120218	120218	12.6218	\$129.21	\$120.21	12 6218	\$129.21	\$129.21	120218	120218	12921	120218	17.0218	129.21	12021	120218	12.02.18	12.6218	1129.21
Principal	\$150.216.64	8150.216.64	\$159.216.64	\$15021664	8150 Z10 G4	\$159,210.04	\$159.043.13	\$150 043.13	\$15006213	\$150,043.13	\$159.043.13	\$158 000.76	315.523.22	158 663,76	\$150.003.76	8158 803 76	15.000.51	15.003.81	\$15e co3.51	150526518	\$156,623,51	\$156,517.39	\$150517.30	0.712.0218	8158,517,30	\$150,517.33	2715.0518	\$158,517,30	\$150,517.33	\$158517.33	58517.33	\$15e,517.30	\$150.517.33	\$158,517.30	58,517,39	\$150.517.33	\$150.517.30	58.517.39	S158,517.30	CE. 712, E218	\$150.517.33	Se 517.30	\$156.517.33	\$150.517.30	\$150,517.30	\$158,517.30	26.517.32	\$156,517.30	\$158,517,30
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		Contractual	Post Due	Pre Due	Amount	Amount	Amount	Escrow	Escrow	Late Charge	Debtor	Trustee
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